

# ELECTION OF SENATORS BY THE PEOPLE

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If United States Senators are elected by the people instead of by the legislatures the people should be permitted to vote.

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The constitutional method of electing senators has worked well for one hundred and twenty-two years. Why experiment?

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## SPEECH OF HON. CHAUNCEY M. DEPEW OF NEW YORK

IN THE  
SENATE OF THE UNITED STATES

TUESDAY, JANUARY 24, 1911

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S P E E C H  
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H O N . C H A U N C E Y M . D E P E W .

The Senate having under consideration the joint resolution (S. J. Res. 134) proposing an amendment to the Constitution providing that Senators shall be elected by the people of the several States—

Mr. DEPEW said:

Mr. PRESIDENT: The subject under discussion is a joint resolution entitled "Joint resolution proposing an amendment to the Constitution providing that Senators shall be elected by the people of the several States."

Who are the people of the several States? The Constitution leaves us in no doubt on this question. It begins with the immortal declaration:

*We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.*

The fourteenth article of the Constitution defines the people by declaring that—

all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the States wherein they reside.

The fifteenth amendment declares that—

the rights of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

The proposed amendment to the Constitution, as reported from the Judiciary Committee and now before the Senate, seems to me to be an effort under the guise of popularizing the election of United States Senators to permit under the Constitution the States to disfran-

chise large classes of their electors. Instead of providing that Senators shall be elected by the people of the several States, it virtually denies the people the right to elect Senators by impairing the fourteenth and fifteenth amendments to the Constitution, which were intended to secure the elective franchise to all citizens of the United States. If this be true, then we are paying a tremendous price to secure a change in the present methods of electing United States Senators. The Constitution makes the following provision for the election of Members of Congress:

The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

The proposed measure, as reported by the committee and now before the Senate, repeals that portion of the Constitution as to the election of Senators.

When the Democratic friends of the proposed amendment are asked why they want this provision of our Constitution, which has existed for a hundred and twenty-two years, repealed, their answer is that under it the right has been claimed for Congress to interfere with the elective franchise in the several States. In other words, under it Congress has endeavored to so legislate, though that legislation has never been passed, as to permit the negro to vote in the Southern States, and that under it may be found, when the question comes before the Supreme Court of the United States, authority to declare the laws, which in one form or another disfranchise the negro vote in some of the States, unconstitutional. But the proposed amendment which declares—

The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures,

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under the guise of giving power directly to the people, permits by the authority of the Constitution unlimited restrictions upon the people's right to vote.

In several States negroes and some others are not allowed to vote for members of the most numerous branch of the legislature. With this amendment there is no limit to which they can carry this exclusion.

Now, then, read the language of the proposed amendment, namely:

The electors of each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures—

and then repeal section 4 of Article I of the Constitution, which reads as follows:

The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators—

and all power over the election of Senators passes from Congress and is remitted absolutely to the States. No matter what restrictions the State may place upon suffrage, no matter what denials of the right of suffrage may result from the action of the States, the Senate is powerless.

During the eloquent and exhaustive speech of the Senator from Maryland [Mr. RAYNER] a colloquy occurred between the Senator and the Senators from Utah [Mr. SUTHERLAND] and Nebraska [Mr. BROWN]. The Senator from Maryland then strongly intimated that unless in connection with the proposition to change the mode of electing United States Senators from the legislature to a popular vote there was coupled a repeal of section 4 of Article I of the Constitution the Southern States would reject the whole proposition. As a further illuminating illustration, southern newspapers which are sent me denounce the proposition of the Senator from Utah as an effort to kill the resolution for the popular election of Senators by loading

the proposition down with unnecessary amendments. They do not state what this alleged unnecessary amendment is. They do not inform their readers that the amendment of the Senator from Utah is simply to take out of the pending resolution for popular elections the part which repeals section 4 of Article I of the Constitution. They simply denounce the proposition of the Senator from Utah as an obstruction intended to prevent the change in the method of electing United States Senators from the legislature to the people. But the whole trend of their comment is that unless the repeal of this section of the Constitution which has existed for 122 years is coupled with the resolution for a popular vote the Southern States do not care and will not have the proposed amendment engrafted into the Constitution. In other words, we are informed that the underlying purpose of this movement is to take away from Congress all power over disfranchisement by State laws and remit to the States unlimited authority to limit the suffrage.

There are 300,000 colored voters in the State of New York. I can conceive of nothing which would affect them so deeply and arouse them so thoroughly as a permanent constitutional disfranchisement of their brethren by the votes of Republican Senators. I am sure before the debate has ended, if this resolution is adopted, the colored voters of Illinois, Indiana, Kansas, New Jersey, New York, Ohio, and Pennsylvania will protest in so effective a way at the polls as to be felt all over the country.

This resolution virtually repeals the fourteenth and fifteenth amendments to the Constitution. It validates by constitutional amendment laws under which citizens of the United States, constituting in the aggregate more than one-tenth of the electorate, are to be permanently deprived of the right of suffrage. There is no pretense that any conditions may arise in the future under which these laws will be liberalized and the growing

intelligence of the negro electors will be recognized. These laws have their origin in a fear of the negro vote in those States where it is equal to the white vote or larger than the white vote. But they are urged or passed for purely political purposes in States where there is no possible fear of the dominance of the negro vote. Maryland, with a small proportionate negro vote, has tried several times within the last few years to disfranchise the colored people within that State, and the avowed purpose of the Democratic party in the State of Maryland, which is not denied, is to continue this effort until they have succeeded in disfranchising this vote. The Democratic leaders of the State of Oklahoma became alarmed at the enormous immigration coming in there from the Middle West, from the great States of Ohio, Illinois, Indiana, and Iowa. They have passed laws intended to prevent the negro from voting so as to postpone as far as possible the inevitable Republicanization of the State of Oklahoma which will result from this immigration. It is a curious commentary upon our forgetfulness of the results of the war for the Union that we have grown indifferent to such an extent to these provisions which were made the permanent results of that struggle by being engrafted into the Constitution. It becomes a subject of earnest study and of serious reflection whether if it were a mistake to adopt the fourteenth and fifteenth amendments at the close of the Civil War it is not a greater mistake forty-five years afterwards when intelligence and education have made such progress among these people to so impair as to virtually repeal those articles.

The title of this proposition is to allow the people to vote. The purpose and object of the resolution is to permanently prevent the people from voting in any State where a dominant power or oligarchy wishes to disfranchise a certain portion of the citizens of that State. Now, I have sympathized with the conditions of

the people of the Southern States since the Civil War. I have persistently and consistently opposed all the drastic measures which have been presented to interfere with their affairs. I was not in favor of the force bill. I was not in favor of the bill which passed the House of Representatives to enforce the provisions of the fourteenth amendment for the reduction of membership in the House of Representatives in proportion to the reduction of the Negro vote in several States. But when it comes to deliberately voting to undo the results of the Civil War, when it comes by constitutional amendment to permanently taking from 10,000,000 people the rewards of education and intelligence, that reward being in a free government the right to vote, I can not assent to or be silent upon the proposition.

Six years ago this same question came up in the Committee on Privileges and Elections, of which I was a member, and I then proposed this same amendment to the resolution which I have offered here and which reads as follows:

Senate joint resolution 134.

Amendment intended to be proposed by Mr. DEPEW to the joint resolution (S. J. Res. 134) proposing an amendment to the Constitution providing that Senators shall be elected by the people of the several States, viz: On page 2, lines 5, 6, 7, and 8, strike out the words "The electors of each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures," and in lieu thereof insert the following:

"The qualifications of male citizens entitled to vote for United States Senators and Representatives in Congress shall be uniform in all the States, and Congress shall have power to enforce this article by appropriate legislation and to provide for the registration of citizens entitled to vote, the conduct of such elections, and the certification of the result."

This amendment simply says that if the people are to vote for the election of United States Senators, then all the people recognized as citizens under the Constitution of the United States shall be permitted to vote. At that time this proposition of mine was incorporated into

the general resolution, and had the unanimous vote of every Republican member of the committee, even of those who were in favor of changing the method of electing United States Senators from the legislature to the people. When it was adopted the resolution was defeated by the unanimous vote of the Democratic members of the committee. But when I offered it in our Committee on the Judiciary it commanded only one vote beside my own.

I desire to call attention to this phase of the subject and to challenge discussion. I wonder if there has been upon this proposition contained in the fourteenth and fifteenth amendments to the Constitution such a change in public sentiment as would be indicated by a unanimous vote six years ago and by an overwhelming majority the other way to-day.

The Constitution of the United States went into operation on the first Wednesday in March, 1789, and on the 1st day of March, 1911, it will have been in force for 122 years. The language of eulogy has been exhausted in its praise. The greatest intellects among the statesmen of other countries have given it commendation beyond any other instrument which ever came from the hands of man. The United States has grown from a fringe of settlements along the Atlantic coast to its present imperial position among the nations of the world in liberty, opportunity, population, and power under this Constitution practically unchanged. With these 122 years of achievement to its credit only an imperious necessity can justify any change. That imperious necessity should have behind it the practically unanimous and determined voice of the American people.

Every Senator knows that the votes which have been cast in the several States for this measure have been so given in obedience to supposed party expediency and without general discussion. This movement has received more impetus from the advocacy of Mr. Bryan

than from any other cause during the half century since the war. And yet, when Mr. Bryan, with the responsibilities of office upon him as a Member of Congress, proposed his idea of an amendment to the Constitution for this purpose in 1894, he left it for each State to decide whether it would elect United States Senators by the old method or the new. All the States which framed the Constitution and all those that can reckon a quarter of a century to their lives, in selecting men who have shed the greatest honor upon their respective Commonwealths, have invariably named them from the membership of the United States Senate. No method of electing Senators could add to that glorious list. It has been said that governors of States furnish an example to the contrary, but it is the history of governors that they are in for a short time. They rarely succeed themselves, and if they do, only once. I do not know that there is on record a single instance of a governor who has been ten years in the service of his State. Every Senator knows that the value of a member of this body, if he is fit to be a member of it, increases with the years. Every Senator also knows that in popular elections, taking the governor as an example, covering the whole State, the second term would be the limit of the senatorial life of anyone, no matter how distinguished. Our Websters, our Clays, our Calhouns, with all their genius for public life and popular leadership, owed their influence upon the policies of parties and the legislation of the Republic to long experience in the Senate. The results of the primary laws have demonstrated that the United States Senator who comes here under the new system would in a vast majority of cases be the choice of a plurality, and, therefore, a minority candidate. In States where one party is sufficiently in the ascendant to make an election certain, candidates would be as numerous as the ambitions of the citizens, and the successful one on the plurality might represent only a tenth of the electorate.

The favorite of the great cities would always prevent the success of a candidate from the country. In many States, where party discipline and organization have been submerged by the primary, races or religions combine and by their united force, as against the scattered results of the general electorate, secure the necessary plurality for one of their race or religion. There is not the slightest pretense that during the long life of our Government a Senator has ever been placed in this body because of race or religion. I do not share in this distrust of the legislatures. Our several Commonwealths have wisely legislated for the interest of the family, of property, of liberty. I do not assent to the proposition that representative government has the distrust of the people.

The Athenian Assembly was the ideal of popular government. I stood once upon the rocky platform from which Demosthenes addressed the voters of Athens. There were 300,000 slaves and 10,000 citizens. Those 10,000 easily gathered upon the plain in front of the orator. He won from his audience the approval of the measures which he proposed against his antagonists because of his eloquence and his ability to fire the popular imagination, stir the popular enthusiasm, and, through them, influence for the moment popular judgment. By holding up the raw head and bloody bones of Philip of Macedon he swept away all opposition, while Philip of Macedon had no purpose such as Demosthenes charged. We all know the appeals which can move a popular audience. A war speech and the bloody shirt had their influence for twenty-five years after Appomattox. When the new generation of voters came upon the stage these appeals meant nothing to them, and the campaign orators had to write new speeches upon new issues or else retire from the platform, as many of them did, because they could not comprehend the new issues. For twenty-five years more the operation of the railroads was an effec-

tive rallying cry. But legislation has been perfected for the control of the railroads by providing penalties for abuse and conferring such absolute power upon the Interstate Commerce Commission and the Commerce Court that the Government is the paramount member of the directorate of every railroad in the United States, and that has ceased to be the rallying cry. Next, it was the corporations. Again, legislation has largely cured corporate evils. The Sherman antitrust law, strengthened by the decisions of the courts, and the corporation-tax law, exposing every secret of every corporation to the Government and through the Government to the people, furnish power on the one hand to the Government and that publicity on the other which makes corporate iniquities exceedingly difficult and punishment swift and sure.

Now a Chautauqua audience can be raised to frenzied heights of rage by picturing to them that they are the slaves of the interests. The interests are vague, but the more shadowy, like the ghost, the more terrible. Of course the Athenian example is impossible with 100,000,000 people, but the whole theory of democratic government in its evolution in Europe and in America is to escape on the one side from the arbitrary power of the autocrat, backed up by control of the army, the navy, the treasury, and taxes, and, on the other hand, to devise processes by which the passions of the hour shall not crystallize into legislation without plenty of time for deliberation and calm judgment. In a sense every form of representative government may be called distrust of the people. Wherever a measure must take its chances first with the Lower House and then with the Upper House and then again in running the gauntlet must escape the club of the veto of the Executive every step is distrust of popular government. But it is a false idea to say that such distrust means lack of confidence in the people or means defying the popular will. It is simply that where the

great mass of the population are engaged in industrial pursuits, which absorb their minds and time, they must necessarily select from among their own number those whom they think best fitted for the tasks upon whom they devolve, as President or as Senator or as Representative or as governor or as member of the legislature, the perfection of measures and the enactment of laws which are for the best interests of the people.

I have received many letters since I introduced my amendment indicating the trend of popular thought, and many editorials not proper to be read in the Senate. Some of them go to an extreme which ought to please that eloquent advocate of popular government, the distinguished Senator from Oregon [Mr. BOURNE], and his recently organized salvation army. [Laughter.] They say, "Abolish the Senate. It is no further of any use. It was all very well when there were no railroads, no telegraphs, and no telephones, or morning and evening papers, to have a Senate to hold in check the House until the people could be heard from; but now, with all these means of instantaneous and intelligent information, the people are informed every day, can reach their immediate Representatives every hour, and they need no protection by a conservative and critical body elected for a longer term and with securer hold of office." Others say, "In amending the Constitution, so amend it that no representative of the interests can be a Senator." They define the interests as every man who, in his personal business or in any employment he may have, is interested in legislation. They bar out everyone who, directly or indirectly, may be affected by the tariff. They bar out all who are counsel for those who may be affected by the tariff. They bar out all stockholders, bondholders, and counsel of corporations. They bar out labor unions. They reduce the opportunities for choice by this process of elimination until, if they ultimately succeed, the United States Senate will be composed entirely of undertakers,

whose profits are in the increasing number of those who die. [Laughter.]

There is a vast amount of humbug about this talk of the interests. I have been a conspicuous victim of it. I have been most of my life in the railway service, and also active in public affairs. I am proud of the fact that while president of the then greatest railroad in the country my State unanimously presented me for President of the United States in the national convention. I decided never to sever nor deny my business associations. It is an insult to the 2,000,000 men who are in the railway service for one of them to admit directly or indirectly that it is impossible for a railway man to serve the public as well as a farmer, or a manufacturer, or a lawyer, or a merchant, or a doctor, or a minister, or a mechanic. I have found no difficulty in serving in the Senate under the administrations of President McKinley, President Roosevelt, and President Taft in supporting, by voice and vote, every administration measure of President McKinley, President Roosevelt, and President Taft. As a matter of fact, the railway man in the public service is uncommonly anxious to prove that the interests of his constituents, the people, are his paramount duty. But we all know that it has never been considered any discredit for a Member of Congress who is either a manufacturer, a miner, a farmer, or an importing merchant to actively labor for such modifications of a tariff bill as may be in the interests of the business or occupation to which he belongs, or a labor member to work for labor legislation.

There is one view of this proposed change in the Constitution which has not received the attention it deserves. It is said that legislatures are more easily influenced by money consideration than popular elections. It is well known that in the primary contests for United States Senator, which are the equivalent of a popular election, there have been expended sums of money so vast that they are beyond anything ever

charged or dreamed of in legislatures. The record of the State legislatures in the election of Senators for 122 years is singularly clear of malign influences. But the critical situation is that which would be created in cases of contested elections. As it is now the Senate, in judging of the qualifications of its members, has a very plain and simple duty. The doings of a representative body of limited numbers are easily inquired into and the Senate committee always has the assistance of committees of the legislature, of grand juries, and of prosecuting attorneys. But in a State-wide election for United States Senator the happenings at every polling place would become a matter of charges and of investigation. We all know that the taking of testimony in those contests generally occupies a session and sometimes the whole term of the member. There are 4,668 election districts in the State of New York and a proportionate number in every other State, according to population. It is no exaggeration to say that in many of these election districts there is always a large expenditure of money in the purchase of votes. The scandals of Adams County, Ohio, now under investigation, where 2,000 of the 5,000 voters have already been convicted, is of course a rare case of the corrupt use of money. But the Ohio papers of both parties say that while not in so large a degree, yet to a certain degree, such conditions exist not in whole counties, but in city wards and county precincts scattered through the State. If the election of a United States Senator had been according to the new proposition, the Committee on Privileges and Elections would be instructed to investigate these charges, if not before, yet immediately upon, the taking of his seat by the new Senator, ATLEE POMERENE. There have been over 400 contested-election cases in the House of Representatives. Four-fifths of them have been notoriously decided by partisan considerations. In every case, if there is a shadow of a doubt, the doubt is in favor of the contestant who

belongs to the majority. If the Senate was close, as the times indicate it will be within an early period, the majority would have committees probing into every election district in States which had elected a Senator who would help in turning the minority of this body into a majority against its sitting members. The contest would be interminable, the situation deplorable, and the decision, whatever it might be, partisan, or at least so charged and generally believed.

The doctrine has been advanced here by all those who have expressed an opinion in opposition to the Senator from Illinois retaining his seat that where there is any bribery proven the seat of the Senator must be vacated. Under that doctrine the record of Adams County would only have to be presented to the Senate and the new Senator from Ohio would not be permitted to take his seat. The whole matter would be remitted back to the State of Ohio for another popular election, with possibly a repetition of the first result.

We all know, and we are all proud of the fact, that the lobby has disappeared from Washington. When I was here during the Civil War the hotels were filled with lobbyists, and scandals charged against individual Senators and Members of the House were so current as to be common and excite no comment. The same was true for a decade at least following the Civil War. But to-day there is no breath of suspicion against the vote by which the great measures of the last twenty years, affecting as they have in the most vital way the wealth, the productive power, the capital, and the labor of the country, have been enacted into law.

Two sets of States, though having entirely different interests, are cordially united in pressing this legislation. They are the new States, with small populations compared with the older ones, and what were formerly known as the slave States of the Union. This is the only measure on which is unfortunately revived the "solid South." I warn each of them that they are pry-

ing off the lid from Pandora's box. They are letting loose the devils to pursue them with increasing aggressiveness, force, and strength during the coming years. Among a people who regard with such extreme reverence, and I might say awe, their Constitution, as do the people of the United States, sentiment is a tremendous factor in the preservation of existing conditions. Change existing conditions and sentiment is buried by the overwhelming force of interest. The goal of all ambitious States has always been power. In the formation of the Republic and the compromises which brought about the Federal Union, power was surrendered by the more populous States to the less populous in representation in the Senate, and surrendered also to the slave-holding States in representation in the House of Representatives. But we propose deliberately to raise this Frankenstein and send him upon his resistless way.

In the debates in that marvelous convention which framed the Constitution—those wise men, who were actuated by only one motive, and that the formation of an indestructible union of sovereign States into an all-powerful republic—two things were unanimously agreed to, one that each State in its sovereign capacity should have equal representation of its sovereignty by two ambassadors called Senators in the Federal Senate, and the other that the corporate representation of the State—the legislature—should elect these two ambassadors. They thus preserved on the one hand the equal sovereignty of all the States, large and small, through equal representation in this branch of the Federal Government, and on the other, to prevent growing populations in some States from endeavoring to disturb the equality of representation in the upper House, they selected State legislatures as the medium through which the voice of the State should be expressed. This process has impressed with equal wonder and admiration De Tocqueville, Gladstone, and

Bryce, the three greatest writers upon the Constitution of the United States. In fact, when French statesmen were framing the machinery for the third Republic of France they decided that one of the best means of avoiding the rocks upon which the other two had been wrecked was to have a senate elected upon lines similar to those which exist in our Constitution. They had no States, but they created artificial States. They divided France into senatorial districts, combining in each district a number of districts which were represented in the popular chamber. They fixed a long term for their senators. In the senate district, when a vacancy occurs, the members of the lower house from that district, the mayors of the cities and of the villages, meet in convention and elect a senator. French statesmen of to-day with whom I have talked claim that many a time in the nearly forty years of the existence of the present Republic, this check by such a senate upon the turbulent passions of the hour of the lower house has given the people time to think and saved the Republic from ruin.

Now, as to the Southern States and their anxiety to preserve their present exclusive election laws: The average number of voters required to elect a Member of Congress in the State of New York is 38,408. The average number in the whole United States is 31,196. The average number of voters for Congressman in the nine States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia is 8,266. In Mississippi 3,000 elect a Congressman; in South Carolina, 4,341; in Georgia, 5,072; and in Arkansas, 5,886. Now, then, thirty-eight States of the American Union have a population of 45,780,297, while ten States have a population of 45,860,900; and yet these ten States have twenty Senators and the thirty-eight States, with practically the same population, have seventy-six. The four contiguous States of Idaho, Nevada, Utah, and Wyoming have a population of

926,785. The four States of New York, Pennsylvania, Illinois, and Ohio have a population of 27,184,437. On a popular basis of representation by the people these four States of Idaho, Nevada, Utah, and Wyoming have four Members of the House of Representatives, while on the same basis the States of New York, Pennsylvania, Illinois, and Ohio have 115 Members of the House of Representatives. But in the United States Senate this 927,000 of population of these four States have eight Senators, while the 27,184,000 of the other four States have also eight Senators.

Mr. BACON. Mr. President—

THE VICE PRESIDENT. Will the Senator from New York yield to the Senator from Georgia?

Mr. DEPEW. Certainly.

Mr. BACON. I do not desire to interrupt the Senator's argument, but at the same time I do not desire the RECORD shall go abroad without, in a certain sense, an issue upon one statement made by the Senator, not directly but by implication, in regard to the number of votes cast in the South in the election of Representatives. The implication is that the vote is a representation of the population or of those who are the legal voters or of those who participate in the selection of Representatives.

Mr. DEPEW. Of those who are permitted to vote.

Mr. BACON. I will say something about that a little later. Of those who are the legal voters in the State, the implication is that there is a representation. The fact is that in those States where there is such a small vote cast at the regular election the true election is the primary election. I will state, by way of illustration, that in a primary election in my State where there will be between two and three hundred thousand votes cast in the primary election there will be fifty or sixty or seventy thousand votes cast at the regular election, the election provided by law. The reason for that is simply that there is but one political party in the

State, the other party not even making nominations, so that when the contest between individuals who compete for the nomination has been decided the election in November at the date prescribed by law is one in which there is no contest, and consequently no inducement for people to go to the polls.

Now as to the question as to who are permitted to vote I will state to the Senator as to my State, and I presume it is true as to other States equally, that no man is denied the right to vote who has the qualifications under the law to vote; that there is no obstruction whatever to any man's voting who has the right to vote; and the question of his right to vote is one which is to be settled by the courts and not by the suggestions which the Senator makes now in a side remark as to who are permitted to vote, implying that those are not permitted to vote who are entitled to vote.

I do not desire to enter into that discussion now, and I did not rise for that purpose. The only purpose I had was that in the very interesting speech of the Senator, and the very strong speech, the suggestion made by him as to the number of those who vote in those States might not go out as being even by implication a statement of the fact that they are a representation of those who, in fact, take part in the choosing of Representatives. They are but a very small part of those who, in fact, determine the question who shall be the Representatives in Congress.

Mr. DEPEW. Mr. President, not desiring any further interruption until I have completed my speech, I will simply say in response to the Senator from Georgia that what I was really referring to is the fact of the disproportionate number of voters in proportion to the population in the Southern States and in the Northern States. In many of the Southern States so many electors are disfranchised that it takes twenty-seven voters in New York to equal one voter in a Southern State. When an investigation is made it will be found that the

same is true of the primary, that because of the large number disfranchised the vote does not correspond to the population, as it does in other States where these restrictive laws do not exist.

Now, as to the qualifications or disqualifications, undoubtedly nobody votes in those States except those who are qualified by the State laws. But who are disqualified? We all know the grandfather clause, which is still in existence in many of the States. But there are others. For instance, there is the educational clause.

Mr. BACON. Found also in Massachusetts.

Mr. BAILEY. It ought to be found in all of them.

Mr. DEPEW. But in its application very different in Massachusetts. In that State the voter is asked to demonstrate his power to read and write, but in the States where the Negro is disfranchised the educational clause is used by the canvassing officers to apply tests which few citizens could meet. A very interesting story was told me, and sometimes an illustration shows the situation better than an argument. This story was told me by a friend of mine, a southerner, a Yale man, and therefore entitled to belief on all questions. He said that at a precinct in his county a negro preacher came up to vote. The canvassing officer said, "You know under our law you have to read and write." "Well," he said, "I was educated at Howard University and at the Howard Theological School; I can read and write." "Do you understand the Constitution of the United States? That is another requisite." "Well," said the clergyman, "I know it by heart, and think I understand it." "Well," said the canvasser, "under the Constitution of the United States you must get out a writ of habeas corpus before you can be permitted to cast a vote, and do you know what a habeas corpus is?" The minister answered, "No, Mr. Canvasser; I do not know what a habeas corpus is, but I do know that a negro can not vote in the State of Mississippi."

[Laughter.]

Parties are always seeking paramount issues. The great leader of the Democratic Party made this question of changing the method of the election of United States Senators, as he thought, a paramount issue. It failed to materialize as he imagined it would, because there was no popular response, and there is none to-day. But the glaring inequality exhibited by the figures which I present are a firm foundation for a paramount issue. The resistless cry from the stump and from the press will be, "Less than a million of people shall not be permitted to neutralize and possibly defeat the wishes of over 27,000,000 citizens. This is a government of the people, by the people, and for the people, and here is a small oligarchy blocking the progress and defeating the wishes of an overwhelming majority. We have paved the way for this reform. It took us, the people, 122 years to get rid of the fetish of the sacredness of the Constitution. Now we have buried that bugaboo, and the people, having come into their own in part, must regain the whole of the power to which they are entitled." What are our friends who are so gayly and hilariously pushing this proposition going to answer before indignant multitudes to this natural sequence? The next slogan for popular appeal will be "Mend the Senate or end it."

I remember before the Civil War and before the abolition of slavery was advocated by any except a mere handful of abolitionists that one of the issues hotly debated and earnestly pressed was to take away from the slave States the representation to which they were entitled in Congress because of their slaves. This agitation made no headway whatever, and was met invariably by the sentimental answer of the people that this part of the Constitution was agreed to by the fathers, and they would not go back on them. Every intelligent student of the present rapid trend toward popular government must see what would happen when this sentimental bar

of the States being represented by two Senators instead of by the people in the United States Senate is thrown down. The initiative, the referendum, and the recall are but symptoms of the times. That the people will have their way, because they, and they alone, are the Government, is the underlying spirit of our institutions, of our newest State Constitutions, and of our progressive laws. Skillful agitation seizes upon every pretext and eagerly grasps and enlarges every opportunity for appeal to the passions in an advancement of its purposes. The next cry will necessarily be, "Why not elect the Supreme Court of the United States by popular vote? Why not elect the Federal judiciary everywhere by popular vote?" Unless we admit that the fathers made a mistake, and a grave one, in throwing these restrictions upon the immediate expression of the passion of the hour into legislation or decision, there is no legitimate answer to such a proposition. A constitutional convention can abrogate the promise of equality of the States in the Senate in the present Constitution. Let the wave rise high enough and thirty millions of people will not consent to have their will thwarted and their laws enacted by five millions. In the jealousies of the colonies, large and small, it was easy to make this compromise, because for the formation of the Republic it was necessary to have all the colonies in as sovereign States. But we have demonstrated by the most gigantic, the most bloody, and the most costly war of history that no State can go out of the Union, and the effort on the part of these sparsely populated States to resist by force their taking their share in legislation in the upper House as they do in the lower House—in proportion to their population—would be treated with scorn and contempt. Majorities are never sentimental and, when they believe they are right, never merciful. "The power is ours by nature and by right, and we will come into our own," will be the cry of the majorities in the future, and there is no logical answer to the claim.

I have spoken thus earnestly from profound conviction. Certainly no Senator can be freer from selfish motives than I am. This legislation can affect my career in the future neither one way nor the other. I have the profoundest reverence, which no language can adequately express, for this wonderful Constitution of the United States. My twelve years' service in this body has increased the life-long admiration I had for it, and to that admiration from this long association with its members has come the tenderest affection. I do not object to changes, even revolutionary changes, when the reasons for them are adequate and when the transparent evils from action are not greater than the prophesied good.

The Senators who have been reelected and the new ones who have been chosen by the legislatures of their several States this year are selections which could not be improved upon by any new method. Of our present Members Massachusetts returns here one of the most brilliant and able statesmen who ever represented that Commonwealth, Mr. LODGE; Maryland gives us back that great lawyer and resourceful debater, Senator RAYNER; Minnesota returns one of our hardest working and most valuable Members, Senator CLAPP; North Dakota honors itself and strengthens the Senate by giving back to us one who has rendered his State and country such distinguished service, Senator McCUMBER; Pennsylvania returns to us a journalist and a business man who has proved a most useful Senator, Senator OLIVER; Texas continues in her service, and that of the Republic, a Senator who has been so long the Democratic leader upon the floor, Senator CULBERSON; Utah continues in the Senate one of the ablest constitutional lawyers in this body, Senator SUTHERLAND; Vermont strengthens the ranks of the practical business men who are needed in legislation for a business country like the United States, Senator PAGE; while Wisconsin sends a statesman who has repeatedly proved by popular and

primary elections that he is the choice of his Commonwealth. While he and I would seldom agree upon public questions, yet there is no abler representative of the views and policies entertained by him and large numbers of others than Senator LA FOLLETTE. The same is true of the new Members. We have from California, Judge WORKS; from Connecticut, ex-Gov. McLEAN; from Indiana, ex-candidate for Vice President on the Democratic ticket, Mr. KERN; from Maine, that brilliant lawyer, CHARLES F. JOHNSON; from Michigan, a statesman tried in the House of Representatives, Mr. TOWNSEND; from Mississippi, the brilliant leader in the House for many years of the Democratic Party, JOHN SHARP WILLIAMS; from Missouri, JAMES A. REED; from Nebraska, GILBERT M. HITCHCOCK; from North Dakota, ASLE J. GRONNA; from Ohio, Lieut. Gov. ATLEE POMERENE; from Washington, MILES POINDEXTER; and from Rhode Island, HENRY F. LIPPITT.

Mr. President, there is a list of Senators selected to serve for the next six years in this body by the legislatures of their States, and no one will assert that if the elections had been of choice by State conventions or directly by the people they would have been either better or abler.

Most of the so-called radical legislation of the past ten years has been really conservative legislation. It has been the correction of admitted evils, the enacting into law of measures for things unknown by previous generations but vital for the present and the future in the development of the country. But here in this proposition we are called upon to disregard the overwhelming lessons of the past and enter upon an untried experiment, to adopt a theory which opens the door for innumerable possibilities of danger to the sovereignty of the States and wise conservatism in the administration of government.